

David L. Owens
Superintendent of Schools

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
Washington, DC 20554

SCHOOL DISTRICT OF CLAY COUNTY

900 Walnut Street
Green Cove Springs, Florida 32043
Telephones:
904/284-6500 (GCS) 904/272-8100 (OP)
1-888-663-2529 (KH)
FAX 904/284-6532 TDD 904/284-6584

BOARD MEMBERS:

Carol Vallencourt
District 1
Carol Studdard
District 2
Charles Van Zant, Jr.
District 3
Wayne Bolla
District 4
Lisa Graham
District 5

Re: WRITTEN EX PARTE COMMUNICATION

Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands - WT Docket No. 03-66

Dear Ms. Dortch:

The School District of Clay County ("Clay County" or "EBS Licensee") submits this letter to clarify the record in the above-referenced proceeding. Specifically, Clay County, through Clay High School, licensee of Educational Broadband Spectrum ("EBS") Station WNC639 responds to the recent Amendment to Petition for Extraordinary Relief filed by the ITFS/2.5 GHz Mobile Wireless Engineering & Development Alliance, Inc., concerning, *inter alia*, the length of the *de facto* transfer lease agreement between Clay County and its spectrum lessee, Fixed Wireless Holdings, LLC.¹ Clay County agrees with IMWED that "an accurate and clear record" is critical to the Commission's ongoing efforts to resolve outstanding issues in this proceeding.²

The IMWED Amendment suggests an inconsistency³ between representations made in Clay County's January 4, 2006 letter to the Commission supporting EBS licensees' flexibility, generally, to enter into spectrum leases in excess of 15 years and the actual term length of its own EBS spectrum lease agreement.⁴ In support of its Amendment, IMWED directs the Commission's attention to the Clay County's long-term *de facto* transfer lease application for Station WNC639 where such application addresses the term of the spectrum lease arrangement for that license.⁵ Although EBS Licensee

¹ See Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands, WT Docket No. 03-66, Amendment to Petition for Extraordinary Relief of the ITFS/2.5 GHz Mobile Wireless Engineering & Development Alliance, Inc. (IMWED), dated January 5, 2006 (IMWED Amendment or Amendment).

² See IMWED Amendment at 3 ("Given that the length of EBS leases has emerged as a key issue before the Commission, an accurate and complete record has become even more critical.").

³ IMWED goes so far as to characterize the alleged inconsistencies as "significant contradictions." See IMWED Amendment at 9.

⁴ See Letter from Alisa Jones, Supervisor of Instructional Support Services, School District of Clay County, to Ms. Marlene H. Dortch, Secretary, Federal Communications Commission, WT Docket No. 03-66 (dated January 4, 2006) (Clay County *Ex Parte*) (opposing efforts to limit EBS lease terms to 15 years and indicating it has entered a lease term in excess of 15 years).

⁵ See Clay County Application or Notification for Spectrum Leasing Arrangement, FCC Form 603-T, File Number 0002089956, at Exhibit 2, as amended June 13, 2005. The language set forth therein states: "[t]he lease is renewable for a term to expire on May 23, 2015, in accordance with applicable FCC rules." This language was intended to indicate *both* that the lease term runs concurrently with the term of the EBS license *and* is renewable when the license is renewed, resulting in an effective lease term in excess of 15 years as permitted by the Commission's rules and policies. See *supra* note 9 (citing *Secondary Markets*); 47 C.F.R. §§ 1.9030(g), (l); 47 C.F.R. § 27.1214(d).

acknowledges that the language describing the lease term may not be as clear as it might have been, Clay County confirms that its lease does, indeed, contain a renewal provision that extends the lease term beyond the term of its current EBS license, *i.e.*, for a term longer than 15 years. Consequently, contrary to IMWED's claims, no inconsistencies or contradictions exist.

Pursuant to the Commission's rules and policies governing *de facto* transfer leases, the term of such leases may extend beyond the term of the license authorization (provided the license is subsequently renewed).⁶ At the time the Commission clarified that spectrum lease arrangements may extend beyond the license term, it nevertheless instructed applicants to a *de facto* lease application to propose, for application purposes, a lease term (for a lease that exceeds the license term) concurrent with the term of the license.⁷ Accordingly, applicants for Commission consent to *de facto* transfer leases that extend beyond the license term typically provide the license expiration date as the "date the Lease is due to expire" when responding to Question 3b on Schedule B of FCC Form 603-T. Moreover, although not specifically required by the Commission's rules, applicants also typically indicate, in some manner, that such leases are renewable so as to reflect the fact that the actual lease term extends beyond the licensee's currently-authorized license term.⁸ Such was the case with the *de facto* transfer application for Station WNC639.⁹ To the extent the language describing the lease term is unclear, EBS Licensee will ensure that information concerning the lease term on any of its subsequent EBS *de facto* transfer lease or renewal applications will be more precise.

Finally, IMWED uses the alleged "inconsistencias" addressed above to renew its call for the filing of unredacted *de facto* transfer leases and to support its continued claim that the Commission's application process alone can not be relied upon to ensure compliance with EBS substantive use requirements.¹⁰ The undersigned respectfully disagrees. First, as demonstrated herein, the information contained in Clay County's *de facto* transfer lease application is, indeed, consistent in all respects with representations subsequently made by it in this proceeding. Second, should the Commission seek to obtain additional information about any particular *de facto* transfer lease arrangement, it may avail itself of its right to obtain a copy of the spectrum lease from either the EBS licensee or lessee pursuant to sections 1.9030(b)(3) and (c)(5) of the rules.¹¹ Similarly, should the Commission deem it necessary to further its rules and policies with respect to EBS spectrum to collect specific information from EBS licensees/lessees, generally, about their EBS lease arrangements, such information could easily be provided via the *de facto* transfer lease application upon Commission directive to do so. In an increasingly competitive environment for EBS spectrum, requiring EBS spectrum lessees to publicly disclose the confidential business terms that facilitate the unique commercial/educational objectives of the parties to such arrangements, could adversely affect their ability to accomplish those very objectives.

⁶ See *Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets*, Second Report and Order, Order on Reconsideration, and Second Further Notice of Proposed Rulemaking, 19 FCC Rod 17503 (2004) at para. 151 ("[s]pectrum leasing parties are free to extend an existing spectrum leasing arrangement beyond the term of the license authorization if the license is renewed"); see also 47 C.F.R. §§ 1.9030(g) & (l);

⁷ See *id.* Specifying the lease term for purposes of a *de facto* transfer lease application as a period of time no longer than the license term is presumably necessary for compatibility with the Commission's current electronic licensing system and databases. Logically, if the underlying license expires and is not renewed by the Commission, there can be no continuing lease term regardless of the parties' intent.

⁸ The Commission's rules for *de facto* leases do require that licensees/lessees that have entered into spectrum leases that extend beyond the license term notify the Commission "of the renewal of the spectrum leasing arrangement at the same time that the licensee submits its application for license renewal." See 47 C.F.R. § 1.9030(l) (*emphasis added*).


⁹ We understand this was also the case with the other *de facto* transfer lease applications specifically identified in IMWED's Amendment. See IMWED Amendment at 2, notes 1-2.

¹⁰ See IMWED Amendment at 9-10.

¹¹ See 47 C.F.R. §§ 1.9030(b)(3) and (c)(5).

Respectfully submitted,

CLAY COUNTY SCHOOL DISTRICT


Name

Supervisor of Instructional Support Services
Title